

Exemption No. 5570

**UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
RENTON, WASHINGTON 98055-4056**

In the matter of the petition of

CONTINENTAL AIRLINES, INC.

Regulatory Docket No. 27041

for an exemption from § 121.310
(f)(3)(iii) of the Federal Aviation Regulations

PARTIAL GRANT OF EXEMPTION

By letter of November 6, 1992, Mr. W. L. Bolfig, Senior Director of Quality Assurance, Continental Airlines, Inc., P.O. Box 12788, Houston, Texas 77217-2788, petitioned for exemption from § 121.310(f)(3)(iii) of the Federal Aviation Regulations (FAR) to permit operation until January 29, 1993, of airplanes having Type III exits that have not been shown to comply with the placarding requirements of § 25.813(c)(3).

Section of the FAR affected:

Part 121 prescribes rules governing the certification and operations of air carriers, air travel clubs, and certain operators for compensation and hire. Section 121.310 of that part contains, in part, standards for access to emergency exits. Paragraph (f)(3)(iii) of that section, as amended by Amendment 121-228, requires that after December 3, 1992, airplanes type certificated after January 1, 1958, must meet the requirements of § 25.813(c) effective June 3, 1992. Section 25.813(c), in addition to requiring improved access to Type III exits, also requires, in paragraph (c)(3), the installation of placards at Type III exits. These placards are intended to inform passengers how to open the exit in an emergency.

The petitioner's supportive information is as follows:

Citing the provisions of § 121.310(f)(3)(iv), Continental Airlines, Inc., submitted letters dated July 2, 1992, requesting certain deviations from the improved access requirements of

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§ 121.310(f)(3)(iii). Subsequently, in response to the FAA's general guidance letter dated August 28, 1992, and reply letter of September 22, 1992, Continental Airlines submitted revised requests for deviation on October 23, 1992.

The FAA responded on November 3, 1992, with grants to allow certain deviations from the configuration requirements of § 25.813(c), based on findings of equivalent safety, and grants to allow deviations from the compliance times specified in § 121.310(f)(3)(iii), in accordance with § 121.310(f)(3)(v). The FAA also advised in that letter that a request for deviation from the compliance time for installation of the required placards may not be processed under the provisions of § 121.310(f)(3)(v), and that if those installations could not be accomplished by December 3, 1992, a petition for exemption should be submitted.

Not having anticipated this, and believing during the course of the above-noted correspondence that placard compliance times would be addressed concurrently with consideration of the deviations associated with the exit reconfigurations, Continental Airlines had not prepared to provide the required placards earlier than at a time consistent with deviations requested for exit access reconfiguration. Continental Airlines estimates that in support of their proposed January 29, 1993, compliance date, the placard art work would be completed by November 13, 1992, the first article inspection accomplished on November 20, 1992, and the manufacture of 1200 placards for 293 airplanes completed by December 10, 1992, and available for installation.

Accordingly, Continental Airlines requests that exemption from the placard requirements of §§ 121.310(f)(3)(iii) and 25.813(c)(3) be granted effective December 3, 1992, and continue in effect until January 29, 1993, at which time it is expected the installations will be completed. Additionally, they request that the publication and comment requirements of § 11.27(c) and, by implication, the 120 day advance submission requirement of § 11.25(b)(1), be waived so as not to delay action on this petition.

Continental Airlines believes that the granting of this petition would be in the public interest in that if it were not to be granted, Continental Airlines would be forced to remove from service its fleet of DC9-30, DC9-80, B727-100, B727-200, B737-100, B737-200 and B737-300 airplanes from December 3, 1992, to January 29, 1993. This would result in a substantial inconvenience and reduction in scheduled revenue service available to the traveling public.

The FAA finds, for good cause, that action on this petition should not be delayed by publication and comment procedures for the following reasons: (1) a grant of exemption would not set a precedent in that it is for a time extension from a requirement and not permanent relief from the requirement and therefore would not create a public safety issue, and (2) a delay in acting on the petition would be disruptive to the flying public and create a major economic burden on the operator.

The Federal Aviation Administration's analysis/summary is as follows:

The petitioner's request is for temporary relief from the compliance date mandated in § 121.310(f)(3)(iii) for accomplishment of the placarding provisions of § 25.813(c)(3). The necessity for the petition appears to be based to a large extent on difficulties associated with communicating and perceiving the extent of the intended deviations, and an unawareness that the deviation provisions of §§ 121.310(f)(3)(iv) and 121.310(f)(3)(v) were only intended to address the more complex tasks associated with reconfiguring access to Type III emergency exits.

Notwithstanding the apparent confusion discussed above, the FAA is not convinced that the petitioner has made its best effort to modify the affected airplanes in a reasonably expeditious manner. Note is made of the ample period of time from May 4, 1992, when the rule was published in the Federal Register, to the December 3, 1992, deadline for designing, procuring, and installing the required placards. The petitioner's argument regarding its intentions for processing the placard compliance date extension as a deviation request is without merit. If the petitioner had initiated compliance in a timely manner, it would not have been "impractical" to comply by the compliance deadline; and therefore the criterion for granting a deviation under the regulation could not have been met. Although the operator has brought about the need for this exemption through its own delays, the FAA nevertheless finds that it is in the public interest to grant the petition because the alternative would be to ground the operator's aircraft and subject the public to an unacceptable degree of inconvenience.

With respect to the duration of the extension, however, the petitioner proposes to allow almost seven weeks from the estimated parts availability date to install placards on 293 airplanes. The FAA considers that at a more aggressive, but attainable, rate of approximately 75 airplanes per week, the installations could be completed in four weeks. Allowing an additional week for schedule slippage, etc., the installations should be completed by January 15, 1993. This is almost two weeks earlier than the schedule proposed by the petitioner.

In consideration of the foregoing, I find that a partial grant of exemption is in the public interest and will not adversely affect the level of safety provided by the regulations. Therefore, pursuant to the authority contained in §§ 313(a) and 601(c) of the Federal Aviation Act of 1958, delegated to me by the Administrator (14 CFR 11.53), a partial grant of exemption is hereby granted to Continental Airlines, Inc. to permit operation from December 3, 1992, until January 15, 1993, of airplanes that do not comply with the placarding provisions of §§ 121.310(f)(3)(iii) and 25.813(c)(3), after which

time the placards must be installed in order to be eligible for continued operation under the provisions of Part 121.

Issued in Renton, Washington, on December 3, 1992.

/s/ Ronald T. Wojnar, Manager
Transport Airplane Directorate
Aircraft Certification Service